

REMARKS

Applicants hereby add claims 64-66. Accordingly, claims 1-42, 46, and 49-66 are pending in the present application.

Claims 1-3, 6-8, 11-13, 16-22, 24-25, 27-29, 33-37, 41-42, 51-53, and 55-57 stand rejected under 35 U.S.C. §103(a) for obviousness over U.S. Patent No. 5,842,118 to Wood, Jr. in view of U.S. Patent No. 5,649,296 to MacLellan et al. and U.S. Patent No. 3,733,602 to Cuckler et al. Claims 58-63 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood in view of MacLellan and Cuckler and further in view of U.S. Patent No. 6,084,530 to Pidwerbetsky et al. Claims 9-10 and 49-50 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood in view of MacLellan and Cuckler and further in view of U.S. Patent No. 6,353,729 to Bassirat. Claims 4-5, 14-15, 23, 26, 30-32, 38-40, 46, and 54 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood in view of MacLellan and Cuckler and further in view of U.S. Patent No. 5,799,010 to Lomp.

With reference to the 103 rejection over Wood, MacLellan and Cuckler, Applicants set forth numerous compelling arguments for patentability in previous responses. There is no motivation to combine the teachings of Cuckler and MacLellan with Wood in support of the 103 rejection for at least the numerous reasons set forth in Applicants' previous responses. For sake of brevity, the arguments are again incorporated herein but have not been repeated.

In addition, claim 1 is allowable for at least the following reasons. It is alleged on page 6 of the Action that Cuckler teaches generating a forward link communication signal

comprising a modulated signal for the purpose of extending the range of communication.

Applicants disagree and allege the art and record is deficient with respect to any motivation to combine the reference teachings.

Initially, the Action states on page 6 that the combination of MacLellan and Wood is appropriate because MacLellan teaches extension of a range of communication. As set forth in previous responses, Applicants have electronically searched MacLellan and have failed to uncover any prior art teachings regarding extension of a range. Nonetheless, as recognized by the Office, col. 6, lines 30-42 of Wood provide for a device of increased range. There is absolutely no evidence of record that the range would be increased by modifying Wood per MacLellan and Wood already provides for increased range making the redundant motivation rationale redundant and lacking. Claim 1 is allowable.

Further, MacLellan is not directed towards power adjustment as alleged in the Action, and even if so, the power of Wood is already adjustable rendering the teachings of MacLellan superfluous and not providing the requisite motivation. Further , the teachings of Fig. 8 of MacLellan are directed towards entirely different systems (prior art versus the MacLellan invention) to enable full duplex communications in MacLellan and such are not directed towards power adjustment (of which MacLellan is not directed) as baldly claimed. There is no motivation to combine the reference teachings and the 103 rejections over Wood and MacLellan are improper for at least this reason.

Referring to the alleged motivation to combine Cuckler to extend the range, the Action at page 6 states that MacLellan is combinable with Wood to extend the range of

communication. Accordingly, Applicants assert that if MacLellan and Wood are combined as alleged, the resultant range of the Wood/MacLellan system is already extended. It then follows there is no additional motivation to look for additional prior art teachings (i.e., Cuckler) to again extend the range of the system. The motivational rationale for combining Cuckler set forth in the Action is allegedly already present in the combination of Wood and MacLellan and accordingly is redundant. Why would one look to modify the reference teachings of Wood and MacLellan when the reason for the modification or combination is already present in the prior art being modified? In view of the redundancy, the only reliance results from impermissible use of Applicants' disclosure and the 103 rejection is improper for at least this reason.

In addition, the Action fails to provide any reasoning of how modifying the system of Wood and MacLellan pursuant to Cuckler to provide a generated forward link communication signal as a modulated signal will result in a communication range being extended. The teachings of Cuckler identified in the Action on page 6 merely disclose communication of a modulated signal and fail to provide any teaching or suggestion that providing a modulated signal increases the range of the system. In fact, Applicants have searched Cuckler and have failed to uncover any teachings directed towards extension of range let alone extension of range using a modulated signal as alleged by the Office. To the contrary of being directed towards communications or extending communications range, Cuckler is directed to an intrusion system. The alleged motivation falls far short of

the precedent established by the Federal Circuit and the 103 rejection over Wood, MacLellan and Cuckler is improper for this additional reason.

There is no evidence of record that the disparate teachings regarding the intrusion deception system of Cuckler may be combined with the backscatter communications systems of Wood or MacLellan. Initially, there is no evidence of record that using a modulated signal of Cuckler would result in an extended range of communications in Wood or MacLellan. Wood and MacLellan already disclose modulators as references 77 and 202, respectively, and one of ordinary skill in the art would not look towards Cuckler for meaningful teachings regarding modulation. Further, Cuckler is directed towards merely outputting pulses and receiving replies from each of the transponders present in a system to monitor whether a security violation has occurred as set forth in col. 4, lines 10-37. The use of modulator 46 is merely directed towards generation of the pulses for monitoring the secured perimeter. Modulator 46 does not provide an extended range for data communications but merely is used for security. One of ordinary skill in the art concerned with electronic communications including backscatter communications of data of Wood or MacLellan would not be motivated to look to the security pulse generator of Cuckler for meaningful teachings. But for improper reliance upon Applicants' disclosure, there is no teaching or suggestion to combine the reference teachings of Cuckler with Wood or MacLellan and the 103 rejection is improper.

The motivation identified in the Office Action is akin to the conclusory statements set forth in *In re Lee* which were found to fail to provide the requisite motivation to support

an obviousness rejection. The Court in *In re Lee* stated the factual inquiry whether to combine references must be through and searching. It must be based on objective evidence of record. The Court in *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992) stated motivation is provided only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. The *Lee* Court stated that the Examiner's conclusory statements in the *Lee* case do not adequately address the issue of motivation to combine. The Court additionally stated that the factual question of motivation is material to patentability and can not be resolved on subjective belief and unknown authority. The Court also stated that deficiencies of cited references cannot be remedied by general conclusions about what is basic knowledge or common sense. The Court further stated that the determination of patentability must be based on evidence.

In the instant case, the record is entirely devoid of any evidence to support motivation to combine the teachings apart from the bald conclusory statements of the Examiner which are insufficient for proper motivation as set forth by the Federal Circuit. Wood already discloses provision of power adjustment and accordingly any teachings of power adjustment of MacLellan are redundant and irrelevant. In addition, the 50% or 100% modulation of MacLellan are not directed towards power adjustment but different systems. There is no objective evidence of record to support the combination of Cuckler. The Office cannot rely on conclusory statements when dealing with particular

combinations of prior art and specific claims but must set forth objective rationale on which it relied. The only rationale identified for combining MacLellan or Cuckler is either nonexistent or flawed for at least the above compelling reasons. Applicants request withdrawal of the 103 rejections for at least this reason.

The claims which depend from independent claim 1 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 3, the Examiner relies upon the teachings of Fig. 8 of MacLellan as allegedly disclosing the claimed adjustment circuitry. A careful read of MacLellan including col. 7, lines 25-47 illustrate that a prior art device uses the full AM modulation scheme of Fig. 8 and the inventive aspects of MacLellan (an entirely different communications system) utilize the partial AM modulation to implement full duplex communications. Usage of 100% or 50% depends upon whether the system is a prior art system or the system of MacLellan and not circuitry within a system which may be fairly construed to teach or suggest the claimed adjustment circuitry. Fig. 8 fails to disclose or suggest limitations of claim 3 and claim 3 is allowable for this additional reason.

Referring to claim 4, the Office on page 3 states that because the references are allegedly analogous, they are combinable. Applicants submit that merely because a piece of art may be analogous fails to establish motivation to combine the reference teachings. There is no motivation and the rejection of claim 4 is improper.

Referring to claim 51, the Examiner again relies upon the teachings of MacLellan as allegedly teaching recited limitations with absolutely no reliance upon teachings of MacLellan itself. The Action alleges that circuits 101 and 102 include first modulated signals and computer 101 outputs modulated digital signals. It is further baldly alleged that "application processor and processor are same, therefore, signals in LAN 103 and application processor are modulated signals." The prior art is devoid of any teaching or suggestion of modulated signals being outputted by 101 or 102. Applicants traverse the statement in the Action which has no basis in the art or otherwise and request that the Examiner submit an affidavit or identify prior art which supports the bald allegation. More specifically, in view of the absence of prior art teachings to support the rejection, the only source of the rejections may result from the personal knowledge of the Examiner. Applicants hereby request identification of prior art which discloses claimed limitations not found in the references of record or the submission of an affidavit in support of any rejection of the claims in a non-final Action. "[A]ssertions of technical facts in areas of esoteric technology must always be supported by citation of some reference work" and "allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should also be supported." *In re Ahlert*, 424 F.2d 1088, 165 USPQ 418, 420-421 (CCPA 1970).

Referring to claim 53, MacLellan is devoid of teaching or suggesting the claimed communication circuitry comprises a wired medium configured to communicate a modulated signal intermediate the housing and the communication station as claimed. The

only modulation to provide a modulated signal in MacLellan occurs at device 103. Further, in Wood, the only modulation occurs in the interrogator unit 26. Neither device alone nor in combination teaches or suggests the claimed housing, communication circuitry and communication station configured to communicate the modulated signal as claimed. The only modulation in the art is before transmission via wireless media and there is no intermediate communication of a modulated signal from the circuitry of the housing using the communication circuitry as claimed. Even if the references are combined, the combination fails to disclose or suggest limitations of claim 53 and the Examiner has failed to establish a *prima facie* rejection. Claim 53 is allowable.

Referring to claim 11, there is no motivation to combine the reference teachings for at least the reasons presented in Applicants' last response. The 103 rejection of claim 11 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 11 in the next Action.

The claims which depend from independent claim 11 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 21, there is no motivation to combine the reference teachings. The 103 rejection of claim 21 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for

this additional reason. Applicants request allowance of claim 21 in the next Action for at least these reasons.

The claims which depend from independent claim 21 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 26, there is no motivation to combine the reference teachings. The 103 rejection of claim 26 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 26 in the next Action.

Referring to claim 27, there is no motivation to combine the reference teachings. The 103 rejection of claim 27 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 27 in the next Action.

The claims which depend from independent claim 27 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 35, there is no motivation to combine the reference teachings. The 103 rejection of claim 35 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 35 in the next Action.

The claims which depend from independent claim 35 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 49, there is no motivation to combine the reference teachings. The 103 rejection of claim 49 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 49 in the next Action.

Referring to claim 50, there is no motivation to combine the reference teachings. The 103 rejection of claim 50 is improper for at least this reason. Further, the prior art relied upon in support of the 103 rejection is non-analogous. The rejection is improper for this additional reason. Applicants request allowance of claim 50 in the next Action.

Referring to the rejection of claim 58, the teachings of MacLellan have been identified as disclosing modulating of a signal from a source providing a modulated signal of a first communication medium type, communicating the modulated signal of the first communication medium type externally of the source, receiving the modulated signal of the first type within a communication station remotely located with respect to the source, converting the modulated signal from the first type to a second communication medium type different than the first type and the communicating of the signal of the second type. The application processor and the LAN of MacLellan provide no teaching or suggestion of communication of a modulated signal. The only modulation occurs within the interrogator 103 which may not be fairly interpreted to disclose or suggest the claimed generating using

a source , the first communicating or thereafter the receiving of the modulated signal within the communication station as claimed. Numerous limitations of claim 58 are not taught nor suggested by the art and claim 58 is allowable for the reason.

Further in support the rejection, the Office states on page 14 that one skilled in the art recognizes using circuitry of source associated with housing or PC and using circuitry of interrogator provide same interrogation process. Once again, Applicants traverse the statement as not being supported by the prior art but only results from the personal knowledge of the Examiner. Limitations are not shown nor suggested by the art and Applicants request recitation of prior art teachings which allegedly disclose the limitations of claim 58 or the submission of an affidavit in a non-final Action so Applicants may appropriately respond during the prosecution of the present application. The art is void of any teaching or suggestion that devices 101 or 102 of MacLellan communicate a modulated signal. Limitations of claim 58 are not taught nor suggested by the art and Applicants request allowance of claim 58 in the next Action.

The claims which depend from independent claim 58 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

In the event that a rejection of the claims is maintained with respect to the prior art, or a new rejection made, Applicants respectfully request identification *in a non-final action* of elements which allegedly correspond to limitations of the claims in accordance with 37 C.F.R §1.104(c)(2). In particular, 37 C.F.R §1.104(c)(2) provides that *the pertinence of*

each reference, if not apparent, must be clearly explained and each rejected claim specified. Further, 37 C.F.R. §1.104(c)(2) states that the Examiner must cite the best references at their command. When a reference is complex or shows or describes inventions other than that claimed by Applicants, the particular teachings relied upon must be designated as nearly as practicable. The pertinence of each reference if not apparent must be clearly explained for each rejected claim specified. Applicants respectfully request clarification of the rejections with respect to specific references and specific references teachings therein pursuant to 37 C.F.R. §1.104(c)(2) in a non-final Action if any claims are not found to be allowable.

In particular, on page 15 of the Action, the subject matter of claim 60 is not disclosed by claim 8 as alleged by the Office. Accordingly, the "references and associated arguments" of claim 8 are irrelevant to claim 60. If claim 60 is not allowed, Applicants request clarification of the prior art relied upon in support of any rejection of claim 60 in accordance with the CFR in a non-final Action so Applicants may appropriately respond during the prosecution of the present application.

Referring to claim 61, the Examiner relies upon the teachings of 103 of MacLellan. However, page 6 of the Action relies upon the teachings of reference 103 of MacLellan as allegedly disclosing the claimed communication station. It is inconsistent and improper for the Office to rely upon the same structure 103 as allegedly disclosing both the source and the station remotely located with respect to the source. Limitations of claim 61 are not shown nor suggested by the art and claim 61 is allowable.

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Referring to claim 62, the only modulation of MacLellan is provided in interrogator 103 which fails to teach or suggest the claimed *modulating comprising RF modulating using a radio frequency transmitter of the source*. Claim 62 is allowable for at least this reason.

Referring to claim 63, the only modulation of MacLellan is provided in interrogator 103 which fails to teach or suggest the claimed *modulating comprising modulating a carrier signal using a data signal using a radio frequency transmitter of the source*. Claim 63 is allowable for at least this reason.

Applicants hereby add new claims 64-66 which are supported at least by Figs. 1 and 4-8 and the associated specification teachings of the originally filed application.

Applicants respectfully request allowance of all pending claims.

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: 9/20/04

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